IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No. 139 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE J.R.VORA
HONOURABLE MR.JUSTICE SHARAD D.DAVE

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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STATE OF GUJARAT - Appellant(s)
Versus
AAMAD @ AHEMAD ALI DAFER & 2 - Opponent(s)

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Appearance :
Mr.K.C.Shah, APP for Appellant(s) : 1,
MR HARSHAD K PATEL for Opponent(s) : 1 - 2.
None for Opponent(s) : 3,

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CORAM : HONOURABLE MR.JUSTICE J.R.VORA

and

HONOURABLE MR.JUSTICE SHARAD D.DAVE

Date : 05/03/2007

ORAL JUDGMENT

(Per : HONOURABLE MR.JUSTICE SHARAD D.DAVE)

1. Heard learned APP Mr.K.C.Shah for the appellant State and Mr.Pinakin Raval for Mr.Harshad Patel for the respondents. Leave to appeal granted. Appeal admitted. Mr.Raval waives for the respondents. At the request of learned advocates for the parties, the matter is taken up for final disposal.

2. This appeal is preferred by the State under Section 378(1)(3) of the Code of Criminal Procedure against the judgment and order delivered by Additional Sessions Judge and Fast Track Judge, Junagadh on 13.7.2004 in Sessions Case No.6 of 2000 and Sessions Case No.71 of 2003 whereby all the present respondents came to be acquitted for the charges levelled against them under Sections 302,397,394,307,506(2) and 34 of the Indian Penal Code and under Section 135 of the Bombay Police Act.

3. During the pendency of the appeal, a letter was received from Ahmedabad Central Jail dated 29.11.2006 informing the death of accused Khamisha Sahu Chavda Dafer which is taken on record. Accordingly, the appeal is abated against the said accused Khamisha Sahu Chavda Dafer.

4. The complaint reveals the prosecution case which is placed at Exh.49 on the record and proceedings that on 5.9.1994 at about 8.00 p.m., the complainant Arvindbhai Raghavbhai Ahir along with his friend Satish Dambhai Datta went to Junagadh for his

personal work. That after completing his work at Junagadh both the complainant and his friend started for Mendarda. That both the complainant and Satish were returning Mendarda on motor-cycle and the complainant was sitting as a pillion rider. That at about 10.45 p.m., when they reached near Palasva village Patiya, the accused were standing on the road and on their arrival one of the accused inflicted stick blow on the head of Satish so that both the complainant and Satish fell down. That thereafter all the accused started giving them stick blows. That the accused, without restraining, were beating up Satish. That the accused armed with deadly weapons i.e., stick, knife and dhariya. Thereafter, all the accused dragged the complainant and Satish to nearby pit and there also the accused beat them. That one of the accused inflicted knife blows on the stomach and chest of the complainant. The complainant also sustained knife blows on the stomach and chest. The complainant also sustained scratch injuries on palm of his left hand, on both hands and on the face. Thereafter, two of the accused took out Rs.900/- from the pocket of the complainant and again started beating up Satish. They were also uttering that “Bannene Patavi Deva Chhe.” However, thereafter, they fled away from the incident. The complainant went to Junagadh Civil Hospital in a bleeding condition and informed the doctor. The doctor in turn informed at Junagadh Taluka Police Station. Thereafter, the police noted down the complaint of the complainant at Junagadh Civil Hospital and registered the case as I

CR No.185/94. Thereafter, the police went to the place of incident where the friend of the complainant Satish was found in a dead condition. The police, thereafter, started investigation and on completion of the investigation filed the charge-sheet against the accused Chanchiyo @ Gafar Kalu Dafer and Khamisha Sahu Chavda Dafer on 1.1.1999 and the charge sheet was filed against the other accused Amad @ Ahmed Ali Dafer Nathwani on 25.7.1999. As the offences charged against the accused were exclusively triable by the Court of Sessions, learned Chief Judicial Magistrate committed the case to the Court of Sessions.

5. On receiving the cases, the learned Sessions Court numbered the cases as Sessions Case No.6 of 2000 and Sessions Case No.71 of 2003 for the accused Amad @ Ahmed Ali Dafer Nathwani and Chanchiyo @ Gafar Kalu Dafer and Khamisha Sahu Chavda Dafer respectively. Thereafter, learned Additional Sessions Judge, 5th Fast Track Court, Junagadh framed common charge against all the three accused on 12.3.2004 wherein all the three accused pleaded not guilty and claimed to be tried. Therefore, the prosecution laid down the oral as well as documentary evidence against the accused and after completion of the same, further statement of all the three accused was recorded under Section 313 of the Criminal Procedure Code. After hearing the learned advocates for both the parties, learned Additional Sessions Judge came to the above conclusion and, hence this appeal.

6. The prosecution examined various witnesses i.e. (1) P.W.1 Dr.Gopalbhai Kadvabhai Gadhesariya at exh.16, (2) P.W.2 Dr.Jyotiben Nathalal Mehta Exh.19, (3) P.W.3 Jamnadas Vitthalbhai Exh.24, (4) P.W.4 Yunusbhai Osmanbhai Exh.26, (5) P.W.5 Aminbhai Ibrahimbhai Dhodhari Exh.29, (6) P.W.6 Maldebhai Karshanbhai Exh.30, (7) P.W.7 Mesurbhai Kanabhai Exh.32, (8) P.W.8 Asif Abdulsatarkarim Exh.37, (9) P.W.9 Abdul Razaq Karim Exh.39, (10) P.W.9 Vrujlal Parsottam Zala Exh.41, (11) P.W.10 Arvindbhai Raghavbhai Exh.48, (12) P.W.11 Bhimjibhai Govindbhai Limbasiya Exh.61, (13) P.W.12 Ramniklal Dharamshibhai Patel Exh.62, and (14) P.W.13 Harichandrasinh Ravubhai Zala Exh.63. The prosecution has also relied on various documentary evidence.

7. Learned trial Judge, while discussing the evidence of the complainant, has discussed that the deposition given by the complainant is totally contrary to the complaint stated by the complainant at Exh.49. As the complainant has not supported the prosecution case in his deposition, he was declared hostile. In his cross-examination, he denied that he identified two accused in the identification parade. He stated that as it was night time, he could not see the faces of any of the accused. It is the case of the complainant that when they were returning to Mendarda on 4.9.1998 in the night at about 10 hours, four unknown persons hit them by sticks. Now, for connecting the accused persons with the same, if the identification parade is considered, the complainant

identified two persons in the identification parade but it is stated by the complainant that the police has asked him to identify these persons and, therefore, the identification parade conducted is useless. Further, in this regard, learned trial Judge has discussed that the incident occurred in the year 1994 whereas the identification parade was conducted in the year 1998. Therefore, when the complainant could not see the accused on the date of incident because of darkness and the identification parade is conducted after a lapse of four years, it is impossible for the complainant to identify the accused.

8. The learned trial Judge, while discussing the fact that whether the death of Satish was caused due to the grievous injuries that were caused to him and if yes, whether the same were caused by the accused, came to the conclusion that as per the deposition of Dr.Jyotiben who performed the post-mortem of the deceased Satishbhai, the death of Satishbhai was caused due to the injuries caused on his death. But, it is not proved beyond reasonable doubt that the said injuries were caused by the present accused. Dr.Gopalbhai also submitted in his deposition that the injuries caused to the deceased were serious in nature which are sufficient to cause death of any person.

9. Discussing the evidence of the witnesses, learned trial Judge has finally come to the

conclusion that the incident causing grievous hurt to Satish by unknown persons because of which he died and injuring the complainant has occurred but it is not proved beyond reasonable doubt by the prosecution that the accused were the same unknown persons who have attacked the complainant and deceased. Therefore, learned Additional Sessions Judge acquitted all the three accused.

10. We have carefully gone through the contentions raised as well as we have scanned the record and proceedings of both the Sessions Cases called for from the trial Court. We have scanned the evidence of each witnesses and appreciated each circumstances of the case.

11. Needless to say that in appeal against acquittal also, the High Court possesses the same powers as in appeal against the order of conviction. The High Court may reappreciate the evidence and give its own finding. But in appeal against acquittal if the High Court comes to different finding than the finding arrived at by the trial Court, then the High Court must deal with the grounds of acquittal advanced by the trial Court. Unless the reasons given by the trial Court are manifestly perverse as unable to stand to reason in any circumstances, interference would be justified in acquittal appeals. However, from the same appreciation of evidence if two views are possible, the view taken by the trial Court cannot be replaced by the second view.

12. We have carefully gone through the evidence of each witnesses as above stated agreeing with the trial Judge. We do not find, therefore, reasoning of the trial Judge extensively perverse so as to interfere with at this stage even though learned A.P.P., has assisted this Court extensively and we have gone through the R & P thoroughly.

13. In view of the above, this appeal stands dismissed.

(J.R.VORA, J) (SHARAD D DAVE, J)

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